

Before the
COMMISSION ON COMMON OWNERSHIP COMMUNITIES
FOR MONTGOMERY COUNTY, MARYLAND

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DEPARTMENT OF HOUSING
& COMMUNITY DEVELOPMENT

In the Matter of
ROBERT and BETTY HOUSTON, OWNERS
18902 Montgomery Village Avenue
Gaithersburg, MD 20879
Complainants

vs.

SOUTH VILLAGE HOMES CORPORATION
10120 Appleridge Road
P.O. Box 2130
Montgomery Village, MD 20886
Respondent

Case No. 141-0
June 16, 1994

DECISION AND ORDER

The above-captioned case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland, for hearing and oral arguments on the 30th day of March and the 4th day of May, 1994, pursuant to Sections 10B-5(i), 10B-9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1984, as amended, and the Complainant and the Respondent having presented their evidence, and the case file, the Disclosure Statement and other documents produced by the parties having been entered into evidence, without objection as to the evidence admitted or the format of the hearing, the panel makes the following findings of fact and conclusions of law and issues the following order:

STATEMENT OF THE CASE

The Complainants are homeowners in the South Village Home Corporation (SVHC). Complainants' home was formerly incorporated in the Center Stage Home Association, Inc. (Center Stage), and is situated on property originally owned by Edward A. DeSimon and

later developed by Kettler Brothers, Inc. Complainants' home is one of 63 homes built in Center Stage which were merged into a total of 852 units in SVHC. These homes were merged into SVHC pursuant to the terms of the Declaration of Corporate Merger dated October 16, 1981 between SVHC and Center Stage. The water/sewer system for the Center Stage homes was built by the developer and is separate from the system serving the rest of SVHC.

In August of 1991, the Respondent assessed homeowners in Center Stage a special fee of \$60.00 per month beginning in 1992 and with increases thereafter for maintenance of the water/sewer system which served their units. Complainants filed their dispute, on July 20, 1993, challenging SVHC's authority to charge the Center Stage homeowners for maintenance of the water/sewer system serving their homes.

FINDINGS OF FACT

1. The Center Stage merged into SVHC pursuant to the terms of the Declaration of Corporate Merger dated October 16, 1981, between the SVHC and the former Center Stage Home Association, Inc., at which time the homes in Center Stage became a part of SVHC and subject to its documents including its Declaration of Covenants, Conditions and Restrictions.

2. Center Stage homeowners paid a total assessment of \$220.00 per unit over a two year period, characterized as a special assessment to maintain the water/sewer system serving their community as consideration for the assumption by SVHC of the risk of maintaining all the community property of Center Stage,

which became the community property of SVHC as a result of the merger.

3. The Center Stage homes are served by a water/sewer system built by the original developer.

4. SVHC passed a resolution on August 28, 1991 assessing Complainants and 62 other homeowners in the Center Stage section \$60.00 per month beginning in 1992 with increases thereafter for the maintenance of the Center Stage water and sewer system.

5. The Declaration of Covenants, Conditions and Restrictions of the South Village Homes Corporation provides in Article V, Section 3(d), that SVHC has a right "to charge reasonable admission and other fees for the use of the common community properties...".

6. SVHC's Declaration provides in Article I, Section 1(c) that "Community properties shall refer to all land improvements and other properties heretofore and hereafter owned or in the possession of the South Village Homes Corporation."

7. The Board of Directors of SVHC has the duty, by virtue of the Bylaws of the Corporation, in Article IX, Section 2(g) "to provide for the maintenance of all community properties and facilities."

DECISION AND CONCLUSIONS OF LAW

8. Based upon a preponderance of the evidence in the record, it is the Decision of the Commission that SVHC does not have the authority to charge a special user fee for any portion of the community facilities which a member of that corporation must

use, as a condition of living in his unit, including the sewer and water system used by any and all members of SVHC.

The Commission concludes that

9. The sewer and water system which services the Center Stage homes is part of the community properties of SVHC.

10. The Declaration of Corporate Merger was negotiated between the two corporations with full knowledge of the potential additional costs involved in the maintenance, and the partially reduced useful life, of the water and sewer system of the Center Stage homes, and the corporations agreed upon a fixed amount as consideration for the assumption of that risk together with the risk of all the other community properties.

11. At the time of the merger, Center Stage gave consideration to SVHC for the risk incurred by SVHC in assuming the responsibilities for maintenance of the water and sewer system.

12. SVHC's authority to charge fees for use of the community properties applies only to the elements of the community property that a member of the corporation uses voluntarily and not to elements of the community properties that a member of the corporation is required to use to maintain his use of his living unit.

13. The sewer and water system is community property which must be used by the Center Stage homeowners, and no option exists on the part of the residents of this section of SVHC with regard to its use.

14. A special assessment to selected homeowners in SVHC for maintenance of community property those homeowners must use violates the Declaration and Bylaws of SVHC, as well as the Articles of Merger.

THEREFORE, it is hereby,

ORDERED that the assessment against the owners who reside in Center Stage homes for the use of the sewer and water system is hereby declared to be invalid; and it is further

ORDERED that the South Village Homes Corporation immediately cease all future collection and user fees for the water and sewer system; and it is further

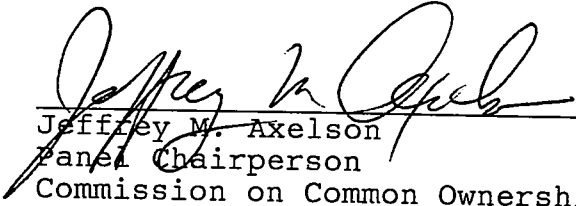
ORDERED that, by January 1, 1995, the South Village Homes Corporation return (by refund or credit) all user fees for water and sewer which were previously paid by, or received from, any unit owner, or past unit owner, in Center Stage homes as a result of a special assessment or user fee for their water and sewer systems other than that contained in the Articles of Merger and that all such payers be notified of this reimbursement; and it is further

RECOMMENDED that the South Village Homes Corporation negotiate the most economical way for the corporation to turn over the portion of its sewer and water system which provides service to Center Stage homes members to the Washington Suburban Sanitary Commission or otherwise proceed to minimize the negative impact of the costs of that portion of the sewer and water system.

The foregoing was concurred in by panel members Axelson, Fox, and Sullivan.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland, within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

6/17/94
Date


Jeffrey M. Axelson
Panel Chairperson
Commission on Common Ownership
Communities

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